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AMENDED IN SENATE JULY 10, 2013

AMENDED IN SENATE JUNE 25, 2013

AMENDED IN ASSEMBLY JUNE 3, 2013

AMENDED IN ASSEMBLY MAY 21, 2013

AMENDED IN ASSEMBLY APRIL 16, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 300

Introduced by Assembly Member Perea

February 12, 2013

An act to amend, *repeal*, and *add* Sections 224.4 and 431 of, and to add *and repeal* Section 319 to, the Public Utilities Code, and to amend, *repeal*, and *add* Sections 41020 and 41030 of, to add *and repeal* Part 21 (commencing with Section 42000) to, and to add *and repeal* Part 21.1 (commencing with Section 42100) to, Division 2 of, the Revenue and Taxation Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 300, as amended, Perea. Telecommunications: prepaid mobile telephony services: state surcharge and fees: local charges collection.

(1) The existing Emergency Telephone Users Surcharge Act generally imposes a surcharge on amounts paid by every person in the state for intrastate telephone service to provide revenues sufficient to fund "911" emergency telephone system costs. Amounts are determined annually by the Office of Emergency Services, and upon collection are paid to

the State Board of Equalization on a monthly basis by the telephone service supplier and are deposited into the State Treasury to the credit of the State Emergency Telephone Number Account in the General Fund, to be expended for limited purposes, including to pay the Department of General Services for its costs in administration of the “911” emergency telephone number system.

Under existing law, the Public Utilities Commission, or PUC, has regulatory authority over public utilities, including telephone corporations, and is authorized to fix just and reasonable rates and charges for services provided by those public utilities. Existing law establishes the Public Utilities Commission Utilities Reimbursement Account and authorizes the PUC to annually determine a fee to be paid by every public utility providing service directly to customers or subscribers and subject to the jurisdiction of the PUC, except for a railroad corporation. The PUC is required to establish the fee, with the approval of the Department of Finance, to produce a total amount equal to that amount established in the authorized PUC budget for the same year, and an appropriate reserve to regulate public utilities, less specified sources of funding. Existing law establishes the state’s telecommunications universal service programs and authorizes the PUC to impose charges for the purpose of funding those programs. Pursuant to this authority, the PUC has established 6 end-user surcharges to fund 6 universal service programs.

This bill would enact the Prepaid Mobile Telephony Service Surcharge Collection Act. The bill would establish a prepaid MTS surcharge, as defined, based upon a percentage of the sales price of each retail transaction that occurs in this state for prepaid mobile telephony services, as defined. The prepaid MTS surcharge would include the emergency telephone users surcharge, as defined, and PUC surcharges, as defined. The bill would require a seller, as defined, to collect the prepaid MTS surcharge, as provided, from a prepaid consumer, as defined, and remit the amounts collected to the State Board of Equalization pursuant to the Fee Collection Procedures Law. The bill would require the board, after deducting its administrative expenses, to deposit the amounts collected for the emergency telephone users surcharge into the Prepaid MTS 911 Account and to deposit the amounts collected for PUC surcharges into the Prepaid MTS PUC Account in the Prepaid Mobile Telephony Services Surcharge Fund, which the bill would establish in the State Treasury. The bill would require the PUC to annually compute for prepaid mobile telephony services the PUC’s

reimbursement fee and 6 universal service program fees, to post notice of those fees on its Internet Web site, and to notify the State Board of Equalization of the amounts, which would be adjusted, as specified, and together would be the PUC surcharges.

The bill would require the PUC, 30 days prior to adopting any adjustment to a reimbursement fee or universal service fee on both postpaid and prepaid intrastate service to prepare a prescribed resolution or other public document proposing the fee adjustment and explaining the calculation of the new fee, as specified, and would require the PUC to make it available to the public and on the PUC's Internet Web site.

The bill would require the Office of Emergency Services to annually compute, as specified, the intrastate portion of the 911 surcharge to be collected on prepaid mobile telephony services to post notice of those charges and to notify the State Board of Equalization of the amount, which would be the emergency telephone users surcharge. The bill would require the Office of Emergency Services to prepare a prescribed summary of the calculation of the proposed 911 surcharge and make the summary available to the public and on its Internet Web site, as specified. Local charges would be computed pursuant to the Local Prepaid Mobile Telephony Services Collection Act, discussed below.

Existing law defines mobile telephony services for purposes of the Public Utilities Code.

This bill would revise that definition and incorporate that definition for purposes of the Prepaid Mobile Telephony Service Surcharge Collection Act.

(2) Existing law generally provides that the legislative body of any charter city may make and enforce all ordinances and regulations with respect to municipal affairs, as provided, including, but not limited to, a utility user tax in that municipality. Existing law generally provides that the legislative body of a city may levy any tax that may be levied by a charter city. Existing law further provides that the board of supervisors of any county may levy a utility user tax on the consumption of, among other things, telephone service, in the unincorporated area of the county.

This bill would, on and after January 1, 2015, ~~and before _____~~, suspend the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a utility user tax on the consumption of prepaid communications service at the rate specified in an ordinance adopted pursuant to existing law, and would instead require the utility user tax rate to be applied during that period

under any ordinance to be at specified tiered rates, to be collected and administered as prescribed in the Prepaid Mobile Telephony Services Surcharge Collection Act. In addition, the bill would, on or after January 1, 2015, ~~and before _____~~, suspend the authority of a city, county, or city and county, including any charter city, county, or city and county, to impose a charge, that applies to prepaid mobile telephony service, on access to communication services or access to local “911” emergency telephone systems, in the city, county, or city and county at the rate as specified in an ordinance adopted pursuant to existing law, and would instead require the charge rate to be applied during that period under any ordinance to be at specified rates, to be collected and administered as prescribed in the Prepaid Mobile Telephony Services Surcharge Collection Act. This bill would specify that a change in a utility user tax rate or access charge rate resulting from either the rate limitations or the end of the suspension period is not subject to voter approval under either statute or Article XIII C of the California Constitution. This bill would require these local charges imposed by a city, county, or a city and county be administered and collected by the State Board of Equalization, deposited in the Local Charges for Prepaid Mobile Telephony Services Fund, which this bill would create, and transmitted to the city, county, or a city and county, as provided.

This bill would allow a consumer to rebut the presumed location of a retail transaction for purposes of the collection of the local charges by filing a claim and declaration under penalty of perjury.

By expanding the crime of perjury, this bill would impose a state-mandated local program.

(3) The bill would repeal these provisions on January 1, 2020.

~~(3)~~

(4) The Fee Collection Procedures Law makes a violation of any provision of the law, or of certain requirements imposed by the board pursuant to the law, a crime.

By expanding the application of the Fee Collection Procedures Law, the violation of which is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(4)~~

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 224.4 of the Public Utilities Code is
2 amended to read:

3 224.4. (a) "Mobile data service" means the delivery of
4 nonvoice information over a radio band licensed by the Federal
5 Communications Commission, to a mobile device and includes
6 nonvoice information communicated to a mobile telephony services
7 handset, nonvoice information communicated to handheld personal
8 digital assistant (PDA) devices and laptop computers, and mobile
9 paging service carriers offering services on pagers and two-way
10 messaging devices. "Mobile data service" includes mobile
11 broadband service offering connectivity over a radio band licensed
12 by the Federal Communications Commission. Unless specified to
13 the contrary, "mobile data service" does not include nonvoice
14 information communicated through a wireless local area network
15 operating in the unlicensed radio bands, commonly known as a
16 "Wi-Fi" network.

17 (b) "Mobile paging service" means the transmission of coded
18 radio signals over a radio band licensed by the Federal
19 Communications Commission, for the purpose of activating
20 specific small radio receivers designed to be carried by a person
21 and to give an aural, visual, or tactile indication when activated.

22 (c) "Mobile satellite telephone service" means voice
23 communication to end users over a mobile satellite service
24 involving the provision of commercial mobile radio service,
25 pursuant to Parts 20 and 25 of Title 47 of the Code of Federal
26 Regulations.

27 (d) "Mobile telephony service" means commercially available
28 interconnected mobile phone services that provide voice
29 communication access to the public switched telephone network
30 (PSTN) by way of mobile communication devices employing
31 radiowave technology to transmit calls, including cellular
32 radiotelephone, broadband Personal Communications Services
33 (PCS), digital Specialized Mobile Radio (SMR), or another radio

band licensed by the Federal Communications Commission. “Mobile telephony services” does not include mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 2. Section 224.4 is added to the Public Utilities Code, to read:

224.4. (a) “Mobile data service” means the delivery of nonvoice information to a mobile device and includes nonvoice information communicated to a mobile telephony services handset, nonvoice information communicated to handheld personal digital assistant (PDA) devices and laptop computers, and mobile paging service carriers offering services on pagers and two-way messaging devices. Unless specified, “mobile data service” does not include nonvoice information communicated through a wireless local area network operating in the unlicensed radio bands, commonly known as a “Wi-Fi” network.

(b) “Mobile paging service” means the transmission of coded radio signals for the purpose of activating specific small radio receivers designed to be carried by a person and to give an aural, visual, or tactile indication when activated.

(c) “Mobile satellite telephone service” means voice communication to end users over a mobile satellite service involving the provision of commercial mobile radio service, pursuant to Parts 20 and 25 of Title 47 of the Code of Federal Regulations.

(d) “Mobile telephony service” means commercially available interconnected mobile phone services that provide access to the public switched telephone network (PSTN) via mobile communication devices employing radiowave technology to transmit calls, including cellular radiotelephone, broadband Personal Communications Services (PCS), and digital Specialized Mobile Radio (SMR). “Mobile telephony services” does not include mobile satellite telephone services or mobile data services used exclusively for the delivery of nonvoice information to a mobile device.

(e) This section shall become operative on January 1, 2020.

1 ~~SEC. 2.~~

2 SEC. 3. Section 319 is added to the Public Utilities Code, to
3 read:

4 319. (a) The commission shall annually, on or before October
5 1 of each year, commencing October 1, 2014, compute a
6 reimbursement fee as a percentage of the sales price for prepaid
7 mobile telephony services, to be effective on January 1 of the
8 following year and to be collected and remitted pursuant to the
9 Prepaid Mobile Telephony Services Surcharge Collection Act (Part
10 21 (commencing with Section 42000) of Division 2 of the Revenue
11 and Taxation Code). On or before October 15 of each year,
12 commencing October 15, 2014, the commission shall post notice
13 of the reimbursement fee on its Internet Web site and notify the
14 State Board of Equalization of this information.

15 (b) The commission shall annually, on or before October 1 of
16 each year, commencing October 1, 2014, compute the cumulative
17 amount of the telecommunications universal service surcharges
18 as a percentage of the sales price for prepaid mobile telephony
19 services, to be effective on January 1 of the following year and to
20 be collected and remitted pursuant to the Prepaid Mobile Telephony
21 Services Surcharge Collection Act (Part 21 (commencing with
22 Section 42000) of Division 2 of the Revenue and Taxation Code).
23 On or before October 15 of each year, commencing October 15,
24 2014, the commission shall post notice of the cumulative surcharge
25 on its Internet Web site and notify the State Board of Equalization
26 of this information.

27 (c) (1) ~~This—~~*Except for the fees computed pursuant to*
28 *subdivisions (a) and (b), this* section neither restricts the
29 commission's authority to adjust reimbursement fees or universal
30 service fees nor requires that they only be adjusted once annually.

31 (2) In annually computing reimbursement fees and universal
32 service fees to be collected and remitted to the commission
33 pursuant to this section, the commission shall adjust the fees to
34 account for any past overcollection of fees from prepaid mobile
35 telephony service customers resulting from a reduction in fees
36 made subsequent to December 31 of the previous year.

37 (3) In annually computing reimbursement fees and universal
38 service fees to be collected and remitted to the commission
39 pursuant to this section, the commission may adjust the fees to
40 account for any past undercollection of fees from prepaid mobile

1 telephony service customers resulting from an increase in fees
2 made subsequent to December 31 of the previous year.

3 (4) If both upward and downward adjustments are made to
4 reimbursement fees and universal service fees subsequent to
5 December 31, the commission may adjust how collections are
6 deposited into the reimbursement and universal service accounts
7 so that overcollections or undercollections are minimized.

8 (5) It is the intent of the Legislature that reimbursement fees
9 and universal service fees be applied, as much as possible, in a
10 competitively neutral manner that does not favor either prepaid or
11 postpaid payment for mobile telephony services, and that, over
12 time, collections of state charges from prepaid and postpaid mobile
13 telephony service customers balance out so that neither pay a
14 disproportionate amount.

15 (6) At least 30 days prior to adopting any adjustment to a
16 reimbursement fee or universal service fee to be collected and
17 remitted to the commission on both postpaid and prepaid intrastate
18 service, the commission shall prepare a resolution or other public
19 document proposing the fee adjustment and explaining the
20 calculation of the fee. The commission shall make the resolution
21 or other public document available to the public and on the
22 commission's Internet Web site and it shall include all of the
23 following:

24 (A) The prior year revenues from the fee, including, but not
25 limited to, revenues from prepaid service.

26 (B) Projected expenses and revenues from all sources, including,
27 but not limited to, prepaid service, for the purposes of the fee.

28 (C) The rationale for adjustment to the reimbursement fee or
29 universal service fee, including, but not limited to, all impacts from
30 prepaid service surcharge collection.

31 (d) The commission shall have enforcement authority to ensure
32 the proper remittances over retail transactions, pursuant to the
33 Prepaid Mobile Telephony Services Surcharge Collection Act (Part
34 21 (commencing with Section 42000) of Division 2 of the Revenue
35 and Taxation Code), where the prepaid mobile telephony services
36 ~~(Prepaid~~ (*prepaid* MTS) provider is also the seller. The commission
37 shall collaborate with the State Board of Equalization in exercising
38 its enforcement authority pursuant to this subdivision.

1 ~~(e) This section shall remain in effect only until January 1, 2020,~~
2 ~~and as of that date is repealed, unless a later enacted statute, that~~
3 ~~is enacted before January 1, 2020, deletes or extends that date.~~

4 ~~SEC. 3.~~

5 SEC. 4. Section 431 of the Public Utilities Code is amended
6 to read:

7 431. (a) The commission shall annually determine a fee to be
8 paid by every electrical, gas, telephone, telegraph, water, sewer
9 system, and heat corporation and every other public utility
10 providing service directly to customers or subscribers and subject
11 to the jurisdiction of the commission other than a railroad, except
12 as otherwise provided in Article 2 (commencing with Section 421),
13 for common carriers and related businesses, and as otherwise
14 provided in Section 319, for prepaid mobile telephony service
15 providers.

16 (b) The annual fee shall be established to produce a total amount
17 equal to that amount established in the authorized commission
18 budget for the same year, including adjustments for increases in
19 employee compensation, other increases appropriated by the
20 Legislature, and an appropriate reserve to regulate public utilities
21 less the amount to be paid from special accounts or funds pursuant
22 to Section 402, reimbursements, federal funds, and any other
23 revenues, and the amount of unencumbered funds from the
24 preceding year.

25 (c) This article shall not apply to any electrical cooperative as
26 defined in Chapter 5 (commencing with Section 2776) of Part 2.

27 ~~(d) This section shall remain in effect only until January 1, 2020,~~
28 ~~and as of that date is repealed, unless a later enacted statute, that~~
29 ~~is enacted before January 1, 2020, deletes or extends that date.~~

30 SEC. 5. Section 431 is added to the Public Utilities Code, to
31 read:

32 431. (a) The commission shall annually determine a fee to be
33 paid by every electrical, gas, telephone, telegraph, water, sewer
34 system, and heat corporation and every other public utility
35 providing service directly to customers or subscribers and subject
36 to the jurisdiction of the commission other than a railroad, except
37 as otherwise provided in Article 2 (commencing with Section 421).

38 (b) The annual fee shall be established to produce a total amount
39 equal to that amount established in the authorized commission
40 budget for the same year, including adjustments for increases in

1 *employee compensation, other increases appropriated by the*
2 *Legislature, and an appropriate reserve to regulate public utilities*
3 *less the amount to be paid from special accounts or funds pursuant*
4 *to Section 402, reimbursements, federal funds, and any other*
5 *revenues, and the amount of unencumbered funds from the*
6 *preceding year.*

7 *(c) This article shall not apply to any electrical cooperative as*
8 *defined in Chapter 5 (commencing with Section 2776) of Part 2.*

9 *(d) On and after January 1, 1985, this article shall apply to*
10 *radiotelephone utilities as defined in Section 4902 as those*
11 *provisions read on December 31, 1984.*

12 *(e) This section shall become operative on January 1, 2020.*

13 ~~SEC. 4.~~

14 *SEC. 6.* Section 41020 of the Revenue and Taxation Code is
15 amended to read:

16 41020. (a) A surcharge is hereby imposed on amounts paid
17 by every person in the state for both of the following:

18 (1) Intrastate telephone communication service in this state. The
19 surcharge shall be ~~applied to~~ *imposed on amounts paid for* prepaid
20 mobile telecommunications services pursuant to the Prepaid Mobile
21 Telephony Services Surcharge Collection Act (Part 21
22 (commencing with Section 42000)), and the calculation of the
23 intrastate portion of charges for prepaid mobile telecommunications
24 services shall be made pursuant to paragraph (1) of subdivision
25 (b) of Section 42010.

26 (2) VoIP service that provides access to the “911” emergency
27 system by utilizing the digits 9-1-1 by any service user in this state
28 commencing on January 1, 2009. The surcharge shall not apply to
29 charges for VoIP service where any point of origin or destination
30 is outside of this state.

31 (b) (1) Notwithstanding Section 41025, charges not subject to
32 the surcharge may be calculated by a service supplier based upon
33 books and records kept in the regular course of business, and, for
34 purposes of calculating the interstate revenue portion not subject
35 to the surcharge, a service supplier may also choose a reasonable
36 and verifiable method from the following:

37 (A) Books and records kept in the regular course of business.

38 (B) Traffic or call pattern studies representative of the service
39 supplier’s business within California.

(C) For VoIP service only, the VoIP safe harbor factor established by the FCC to be used to calculate the service supplier's contribution to the federal Universal Service Fund. The FCC safe harbor factor in effect for VoIP service on September 1 of each year shall apply for the period of January 1 ~~through~~ to December 31, inclusive, of the next succeeding calendar year for purposes of this method. At ~~such~~ *the* time ~~as~~ the FCC establishes a safe harbor factor for the federal Universal Service Fund for VoIP service that is greater than 75 percent for interstate revenue or abolishes the safe harbor factor applicable to VoIP service, this method shall become void and of no effect, in which case a VoIP service supplier may use an alternative method approved in advance by the board, which shall be available to all VoIP service suppliers. The FCC safe harbor factor applicable to VoIP service, as described in this subparagraph, is used solely as a mechanism to calculate the charges not subject to the surcharge for VoIP service and is not necessarily reflective of the intrastate portion of VoIP service. The use of the FCC safe harbor factor authorized by this subdivision shall not be interpreted to permit application of any intrastate requirement, other than the surcharge imposed under this part, upon VoIP service suppliers.

(2) Any method chosen by a service supplier shall remain in effect for at least one calendar year.

(3) If a service supplier reasonably relies upon books and records kept in the regular course of business or any documentation that satisfies the reasonable and verifiable method, then the service supplier's determination of the portion of the billed amount attributable to services not subject to the surcharge shall be rebuttably presumed to be correct. The service supplier's choice of books and records or other method and surcharge billing practice shall also be rebuttably presumed to be fair and legal business practices.

(4) It is the intent of the Legislature that the provisions of subparagraph (C) shall not be considered to be a precedent for the application of the surcharge or any other tax or fee where a person is required to collect a tax or fee imposed upon another.

(c) The surcharge imposed shall be at the rate of one-half of 1 percent of the charges made for ~~such~~ *the* services to and including November 1, 1982, and thereafter at a rate fixed pursuant to Article 2 (commencing with Section 41030).

1 (d) The surcharge shall be paid by the service user as hereinafter
2 provided.

3 (e) The surcharge imposed shall not apply to either of the
4 following:

5 (1) In accordance with the Mobile Telecommunications Sourcing
6 Act (Public Law 106-252), which is incorporated herein by
7 reference, to any charges for mobile telecommunications services
8 billed to a customer where those services are provided, or deemed
9 provided, to a customer whose place of primary use is outside this
10 state. Mobile telecommunications services shall be deemed
11 provided by a customer's home service provider to the customer
12 if those services are provided in a taxing jurisdiction to the
13 customer, and the charges for those services are billed by or for
14 the customer's home service provider.

15 (2) To any charges for VoIP service billed to a customer where
16 those services are provided to a customer whose place of primary
17 use of VoIP service is outside this state.

18 (f) For purposes of this section:

19 (1) "Charges for mobile telecommunications services" means
20 any charge for, or associated with, the provision of commercial
21 mobile radio service, as defined in Section 20.3 of Title 47 of the
22 Code of Federal Regulations, as in effect on June 1, 1999, or any
23 charge for, or associated with, a service provided as an adjunct to
24 a commercial mobile radio service, that is billed to the customer
25 by or for the customer's home service provider, regardless of
26 whether individual transmissions originate or terminate within the
27 licensed service area of the home service provider.

28 (2) "Customer" means (A) the person or entity that contracts
29 with the home service provider for mobile telecommunications
30 services, or with a VoIP service provider for VoIP service, or (B)
31 if the end user of mobile telecommunications services or VoIP
32 service is not the contracting party, the end user of the mobile
33 telecommunications service or VoIP service. This paragraph applies
34 only for the purpose of determining the place of primary use. The
35 term "customer" does not include (A) a reseller of mobile
36 telecommunications service or VoIP communication service, or
37 (B) a serving carrier under an arrangement to serve the mobile
38 customer outside the home service provider's licensed service
39 area.

1 (3) “Home service provider” means the facilities-based carrier
2 or reseller with which the customer contracts for the provision of
3 mobile telecommunications services.

4 (4) “Licensed service area” means the geographic area in which
5 the home service provider is authorized by law or contract to
6 provide commercial mobile radio service to the customer.

7 (5) “Mobile telecommunications service” means commercial
8 mobile radio service, as defined in Section 20.3 of Title 47 of the
9 Code of Federal Regulations, as in effect on June 1, 1999.

10 (6) “Place of primary use” means the street address
11 representative of where the customer’s use of the mobile
12 telecommunications service or VoIP service primarily occurs, that
13 must be:

14 (A) The residential street address or the primary business street
15 address of the customer.

16 (B) With respect to mobile telecommunications service, within
17 the licensed service area of the home service provider.

18 (7) (A) “Reseller” means a provider who purchases
19 telecommunications services or VoIP service from another
20 telecommunications service provider or VoIP service and then
21 resells the services, or uses the services as a component part of,
22 or integrates the purchased services into, a mobile
23 telecommunications service or VoIP service.

24 (B) “Reseller” does not include a serving carrier with which a
25 home service provider arranges for the services to its customers
26 outside the home service provider’s licensed service area.

27 (8) “Serving carrier” means a facilities-based carrier providing
28 mobile telecommunications service to a customer outside a home
29 service provider’s or reseller’s licensed area.

30 (9) “Taxing jurisdiction” means any of the several states, the
31 District of Columbia, or any territory or possession of the United
32 States, any municipality, city, county, township, parish,
33 transportation district, or assessment jurisdiction, or any other
34 political subdivision within the territorial limits of the United States
35 with the authority to impose a tax, charge, or fee.

36 (10) “VoIP service provider” means that provider of VoIP
37 service with whom the end user customer contracts for the
38 provision of VoIP services for the customer’s own use and not for
39 resale.

1 (g) *This section shall remain in effect only until January 1, 2020,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2020, deletes or extends that date.*

4 SEC. 7. *Section 41020 is added to the Revenue and Taxation*
5 *Code, to read:*

6 41020. (a) *A surcharge is hereby imposed on amounts paid*
7 *by every person in the state for both of the following:*

8 (1) *Intrastate telephone communication service in this state*
9 *commencing on July 1, 1977.*

10 (2) *VoIP service that provides access to the “911” emergency*
11 *system by utilizing the digits 9-1-1 by any service user in this state*
12 *commencing on January 1, 2009. The surcharge shall not apply*
13 *to charges for VoIP service where any point of origin or destination*
14 *is outside of this state.*

15 (b) (1) *Notwithstanding Section 41025, charges not subject to*
16 *the surcharge may be calculated by a service supplier based upon*
17 *books and records kept in the regular course of business, and, for*
18 *purposes of calculating the interstate revenue portion not subject*
19 *to the surcharge, a service supplier may also choose a reasonable*
20 *and verifiable method from the following:*

21 (A) *Books and records kept in the regular course of business.*

22 (B) *Traffic or call pattern studies representative of the service*
23 *supplier’s business within California.*

24 (C) *For VoIP service only, the VoIP safe harbor factor*
25 *established by the FCC to be used to calculate the service*
26 *supplier’s contribution to the federal Universal Service Fund. The*
27 *FCC safe harbor factor in effect for VoIP service on September 1*
28 *of each year shall apply for the period of January 1 to December*
29 *31, inclusive, of the next succeeding calendar year for purposes*
30 *of this method. At such time as the FCC establishes a safe harbor*
31 *factor for the federal Universal Service Fund for VoIP service that*
32 *is greater than 75 percent for interstate revenue or abolishes the*
33 *safe harbor factor applicable to VoIP service, this method shall*
34 *become void and of no effect, in which case a VoIP service supplier*
35 *may use an alternative method approved in advance by the board,*
36 *which shall be available to all VoIP service suppliers. The FCC*
37 *safe harbor factor applicable to VoIP service, as described in this*
38 *subparagraph, is used solely as a mechanism to calculate the*
39 *charges not subject to the surcharge for VoIP service and is not*
40 *necessarily reflective of the intrastate portion of VoIP service. The*

1 *use of the FCC safe harbor factor authorized by this subdivision*
2 *shall not be interpreted to permit application of any intrastate*
3 *requirement, other than the surcharge imposed under this part,*
4 *upon VoIP service suppliers.*

5 *(2) Any method chosen by a service supplier shall remain in*
6 *effect for at least one calendar year.*

7 *(3) If a service supplier reasonably relies upon books and*
8 *records kept in the regular course of business or any*
9 *documentation that satisfies the reasonable and verifiable method,*
10 *then the service supplier's determination of the portion of the billed*
11 *amount attributable to services not subject to the surcharge shall*
12 *be rebuttably presumed to be correct. The service supplier's choice*
13 *of books and records or other method and surcharge billing*
14 *practice shall also be rebuttably presumed to be fair and legal*
15 *business practices.*

16 *(4) It is the intent of the Legislature that the provisions of*
17 *subparagraph (C) shall not be considered to be a precedent for*
18 *the application of the surcharge or any other tax or fee where a*
19 *person is required to collect a tax or fee imposed upon another.*

20 *(c) The surcharge imposed shall be at the rate of one-half of 1*
21 *percent of the charges made for such services to and including*
22 *November 1, 1982, and thereafter at a rate fixed pursuant to Article*
23 *2 (commencing with Section 41030).*

24 *(d) The surcharge shall be paid by the service user as*
25 *hereinafter provided.*

26 *(e) The surcharge imposed shall not apply to either of the*
27 *following:*

28 *(1) In accordance with the Mobile Telecommunications Sourcing*
29 *Act (Public Law 106-252), which is incorporated herein by*
30 *reference, to any charges for mobile telecommunications services*
31 *billed to a customer where those services are provided, or deemed*
32 *provided, to a customer whose place of primary use is outside this*
33 *state. Mobile telecommunications services shall be deemed*
34 *provided by a customer's home service provider to the customer*
35 *if those services are provided in a taxing jurisdiction to the*
36 *customer, and the charges for those services are billed by or for*
37 *the customer's home service provider.*

38 *(2) To any charges for VoIP service billed to a customer where*
39 *those services are provided to a customer whose place of primary*
40 *use of VoIP service is outside this state.*

1 (f) *For purposes of this section:*

2 (1) *“Charges for mobile telecommunications services” means*
3 *any charge for, or associated with, the provision of commercial*
4 *mobile radio service, as defined in Section 20.3 of Title 47 of the*
5 *Code of Federal Regulations, as in effect on June 1, 1999, or any*
6 *charge for, or associated with, a service provided as an adjunct*
7 *to a commercial mobile radio service, that is billed to the customer*
8 *by or for the customer’s home service provider, regardless of*
9 *whether individual transmissions originate or terminate within*
10 *the licensed service area of the home service provider.*

11 (2) *“Customer” means (A) the person or entity that contracts*
12 *with the home service provider for mobile telecommunications*
13 *services, or with a VoIP service provider for VoIP service, or (B)*
14 *if the end user of mobile telecommunications services or VoIP*
15 *service is not the contracting party, the end user of the mobile*
16 *telecommunications service or VoIP service. This paragraph*
17 *applies only for the purpose of determining the place of primary*
18 *use. The term “customer” does not include (A) a reseller of mobile*
19 *telecommunications service or VoIP communication service, or*
20 *(B) a serving carrier under an arrangement to serve the mobile*
21 *customer outside the home service provider’s licensed service*
22 *area.*

23 (3) *“Home service provider” means the facilities-based carrier*
24 *or reseller with which the customer contracts for the provision of*
25 *mobile telecommunications services.*

26 (4) *“Licensed service area” means the geographic area in which*
27 *the home service provider is authorized by law or contract to*
28 *provide commercial mobile radio service to the customer.*

29 (5) *“Mobile telecommunications service” means commercial*
30 *mobile radio service, as defined in Section 20.3 of Title 47 of the*
31 *Code of Federal Regulations, as in effect on June 1, 1999.*

32 (6) *“Place of primary use” means the street address*
33 *representative of where the customer’s use of the mobile*
34 *telecommunications service or VoIP service primarily occurs, that*
35 *must be:*

36 (A) *The residential street address or the primary business street*
37 *address of the customer.*

38 (B) *With respect to mobile telecommunications service, within*
39 *the licensed service area of the home service provider.*

1 (7) (A) “Reseller” means a provider who purchases
2 telecommunications services or VoIP service from another
3 telecommunications service provider or VoIP service and then
4 resells the services, or uses the services as a component part of,
5 or integrates the purchased services into, a mobile
6 telecommunications service or VoIP service.

7 (B) “Reseller” does not include a serving carrier with which a
8 home service provider arranges for the services to its customers
9 outside the home service provider’s licensed service area.

10 (8) “Serving carrier” means a facilities-based carrier providing
11 mobile telecommunications service to a customer outside a home
12 service provider’s or reseller’s licensed area.

13 (9) “Taxing jurisdiction” means any of the several states, the
14 District of Columbia, or any territory or possession of the United
15 States, any municipality, city, county, township, parish,
16 transportation district, or assessment jurisdiction, or any other
17 political subdivision within the territorial limits of the United
18 States with the authority to impose a tax, charge, or fee.

19 (10) “VoIP service provider” means that provider of VoIP
20 service with whom the end user customer contracts for the
21 provision of VoIP services for the customer’s own use and not for
22 resale.

23 (g) The amendments made to this section by the act that added
24 this subdivision shall become operative upon the enactment of that
25 act, except that subdivisions (a) and (b) of this section, as amended,
26 shall become operative on January 1, 2009.

27 (h) This section shall become operative on January 1, 2020.

28 ~~SEC. 5.~~

29 SEC. 8. Section 41030 of the Revenue and Taxation Code is
30 amended to read:

31 41030. (a) The Office of Emergency Services shall determine
32 annually, on or before October 1, to be effective on January 1 of
33 the following year, a surcharge pursuant to subdivision (b) that it
34 estimates will produce sufficient revenue to fund the current fiscal
35 year’s 911 costs.

36 (b) The surcharge shall be determined by dividing the costs
37 (including incremental costs) the Office of Emergency Services
38 estimates for the current fiscal year of 911 plans approved pursuant
39 to Section 53115 of the Government Code, less the available
40 balance in the State Emergency Telephone Number Account in

1 the General Fund, by its estimate of the charges for intrastate
2 telephone communications services, *the interstate portion of*
3 *prepaid telecommunications services*, and VoIP service to which
4 the surcharge will apply for the period of January 1 to December
5 31, inclusive, of the next succeeding calendar year, but in no event
6 shall ~~such~~ the surcharge rate in any year be greater than
7 three-quarters of 1 percent ~~nor~~ or less than one-half of 1 percent.
8 In making its ~~estimate of computation of the~~ charges that are
9 applicable to the intrastate portion of prepaid mobile
10 telecommunications services, the Office of Emergency Services
11 shall ~~multiply the surcharge by the inverse of the interstate safe~~
12 ~~harbor percentage established by the Federal Communications~~
13 ~~Commission for federal universal service contribution purposes,~~
14 ~~consistent with paragraph (1) of subdivision (b) of Section 42010~~
15 *use 78.5 percent of the total charges as being the intrastate portion*
16 *of the charges.*

17 (c) The Office of Emergency Services shall notify the board of
18 the surcharge amount by October 15 of each year, commencing
19 with October 15, 2014. The board shall utilize the surcharge
20 amount to calculate the emergency telephone users surcharge
21 component of the prepaid MTS surcharge, *as defined in subdivision*
22 *(l) of Section 42004*, pursuant to paragraph (1) of subdivision (b)
23 and subdivision (d) of Section 42010.

24 (d) At least 30 days prior to determining the surcharge pursuant
25 to subdivision (a), the Office of Emergency Services shall prepare
26 a summary of the calculation of the proposed surcharge and make
27 it available to the public and on its Internet Web site. The summary
28 shall contain all of the following:

29 (1) The prior year revenues to fund 911 costs, including, but
30 not limited to, revenues from prepaid service.

31 (2) Projected expenses and revenues from all sources, including,
32 but not limited to, prepaid service to fund 911 costs.

33 (3) The rationale for adjustment to the surcharge determined
34 pursuant to subdivision (b), including, but not limited to, all
35 impacts from prepaid service surcharge collection.

36 (e) *This section shall remain in effect only until January 1, 2020,*
37 *and as of that date is repealed, unless a later enacted statute, that*
38 *is enacted before January 1, 2020, deletes or extends that date.*

39 SEC. 9. *Section 41030 is added to the Revenue and Taxation*
40 *Code, to read:*

1 41030. (a) *The Office of Emergency Services shall determine*
2 *annually, on or before October 1, a surcharge rate that it estimates*
3 *will produce sufficient revenue to fund the current fiscal year's*
4 *911 costs. The surcharge rate shall be determined by dividing the*
5 *costs (including incremental costs) the Office of Emergency*
6 *Services estimates for the current fiscal year of 911 plans approved*
7 *pursuant to Section 53115 of the Government Code, less the*
8 *available balance in the State Emergency Telephone Number*
9 *Account in the General Fund, by its estimate of the charges for*
10 *intrastate telephone communications services and VoIP service*
11 *to which the surcharge will apply for the period of January 1 to*
12 *December 31, inclusive, of the next succeeding calendar year, but*
13 *in no event shall such surcharge rate in any year be greater than*
14 *three-quarters of 1 percent or less than one-half of 1 percent.*

15 (b) *This section shall become operative on January 1, 2020.*

16 ~~SEC. 6.~~

17 SEC. 10. Part 21 (commencing with Section 42000) is added
18 to Division 2 of the Revenue and Taxation Code, to read:

19
20 PART 21. PREPAID MOBILE TELEPHONY SERVICES
21 SURCHARGE COLLECTION ACT

22
23 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

24
25 42000. This part shall be known, and may be cited, as the
26 Prepaid Mobile Telephony Services Surcharge Collection Act.

27 42002. The Legislature finds and declares all of the following:

28 (a) Maintaining effective and efficient communications services,
29 911 emergency systems, communications-related public policy
30 programs to promote universal service, and various local programs
31 across the state benefits all persons with access to the
32 telecommunications system.

33 (b) Providers of end-use communications services, including
34 providers of mobile voice telecommunications services, which the
35 Federal Communications Commission terms mobile telephony
36 service, are required to collect and remit communications taxes,
37 fees, and surcharges on various types of communication service
38 revenues, as provided by existing state or local law.

1 (c) Consumers purchase prepaid mobile telephony services at
2 a wide variety of retail locations and other distribution channels,
3 as well as through service providers.

4 (d) Prepaid mobile telephony services are an important and
5 growing segment of the communications industry. Prepaid mobile
6 telephony services are often the only means by which persons with
7 low incomes can obtain limited access to the telecommunications
8 system.

9 (e) To ensure equitable contributions from end-use consumers
10 of postpaid and prepaid mobile telephony services in this state,
11 there should be standardization with respect to the method used
12 to collect communications taxes, fees, and surcharges from end-use
13 consumers of prepaid mobile telephony services.

14 (f) Prepaid mobile telephony services are frequently sold by a
15 third-party retailer that is not the provider of mobile telephony
16 services, and collecting taxes, fees, and surcharges from prepaid
17 consumers of mobile telephony services at the time of the retail
18 transaction is necessary and the most efficient and competitively
19 neutral means of collection.

20 (g) An equitable distribution mechanism is necessary to ensure
21 that utility user taxes and other telecommunication charges are
22 collected on behalf of cities and counties and are properly
23 distributed to those jurisdictions.

24 42004. For purposes of this part, the following terms have the
25 following meanings:

26 (a) “Board” means the State Board of Equalization.

27 (b) “Emergency telephone users surcharge” means surcharges
28 authorized pursuant to the Emergency Telephone Users Surcharge
29 Act (Part 20 (commencing with Section 41001)) to be collected
30 from prepaid consumers of mobile telephony services.

31 (c) “In this state” means within the exterior limits of the State
32 of California and includes all territory within those limits owned
33 by or ceded to the United States of America.

34 (d) “Local charges” means those charges described in
35 subdivision (a) of Section 42101.

36 (e) “Local jurisdiction” or “local agency” means a city, county,
37 or city and county, which includes a charter city, county, or city
38 and county.

39 (f) “*Mobile data service*” has the same meaning as defined in
40 Section 224.4 of the Public Utilities Code.

~~(f)~~

(g) “Mobile telephony service” and “mobile data service” have the same meanings as defined in Section 224.4 of the Public Utilities Code. ~~“MTS” means mobile telephony service.~~

~~(g)~~

(h) “Person” includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any city, county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

~~(h)~~

(i) “Prepaid consumer” means a person who purchases prepaid mobile telephony services in a retail transaction.

~~(i)~~

(j) “Prepaid mobile telephony services” means the right to utilize a mobile device authorized by the Federal Communications Commission for mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars. For these purposes, “telecommunications service” and “information service” have the same meanings as defined in Section 153 of Title 47 of the United States Code.

~~(j)~~

(k) “Prepaid MTS provider” means a person that provides prepaid mobile telephony services pursuant to a license issued by the Federal Communications Commission.

~~(k)~~

(l) “Prepaid MTS surcharge” means the surcharge that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Section 42010, that is required to be collected by a seller from a prepaid consumer.

~~(l)~~

(m) “Public Utilities Commission surcharges” means surcharges authorized by the Public Utilities Commission to be billed and collected from end-use consumers of wireless communications

1 services, and of which the commission provides the board with
2 notice pursuant to Section 319 of the Public Utilities Code,
3 including:

4 (1) The California High-Cost Fund-A Administrative Committee
5 Fund program surcharge (Section 275.6 of the Public Utilities
6 Code).

7 (2) The California High-Cost Fund-B Administrative Committee
8 Fund program surcharge (Section 739.3 of the Public Utilities
9 Code).

10 (3) The Deaf and Disabled Telecommunications Program
11 Administrative Committee Fund surcharge (Section 2881 of the
12 Public Utilities Code).

13 (4) The California Teleconnect Fund Administrative Committee
14 Fund program surcharge (Section 280 of the Public Utilities Code).

15 (5) The California Advanced Services Fund program surcharge
16 (Section 281 of the Public Utilities Code).

17 (6) The Moore Universal Telephone Service Act (Article 8
18 (commencing with Section 871) of Chapter 4 of Part 1 of Division
19 1 of the Public Utilities Code).

20 (7) Public Utilities Commission reimbursement fees imposed
21 pursuant to Chapter 2.5 (commencing with Section 401) of Part 1
22 of Division 1 of the Public Utilities Code.

23 ~~(m)~~

24 (n) “Retail transaction” means the purchase of prepaid mobile
25 telephony services, either alone or in combination with mobile
26 data *or other* services, from a seller for any purpose other than
27 resale in the regular course of business. For these purposes, a
28 “purchase” means any transfer of title or possession, exchange, or
29 barter, conditional or otherwise.

30 ~~(n)~~

31 (o) “Seller” means a person that sells prepaid mobile telephony
32 service to a person in a retail transaction.

33
34 CHAPTER 2. THE PREPAID MOBILE TELEPHONY SERVICES
35 SURCHARGE
36

37 42010. (a) (1) On and after January 1, 2015, a prepaid MTS
38 surcharge shall be imposed on each prepaid consumer and shall
39 be collected by a seller from each prepaid consumer at the time of
40 each retail transaction in this state. The prepaid MTS surcharge

1 shall be imposed as a percentage of the sales price of each retail
2 transaction that occurs in this state.

3 (2) The prepaid MTS surcharge shall be in lieu of any charges
4 imposed pursuant to the Emergency Telephone Users Surcharge
5 Act (Part 20 (commencing with Section 41001)) and the Public
6 Utilities Commission surcharges for prepaid mobile telephony
7 services.

8 (b) The prepaid MTS surcharge shall be annually calculated by
9 the board by no later than November 1 of each year commencing
10 November 1, 2014, by adding the following:

11 (1) The surcharge rate established pursuant to Section 41030
12 as of October 1 of each year, which shall be the surcharge rate
13 established for intrastate telephone communication service in this
14 state ~~multiplied by the inverse of the interstate wireless safe harbor~~
15 ~~percentage established by the Federal Communications~~
16 ~~Commission for federal universal service contribution purposes,~~
17 ~~as these percentages may be revised from time to time, by using~~
18 *78.5 percent of the total charges as being the intrastate portion*
19 *of the charges.*

20 (2) The Public Utilities Commission surcharges, established by
21 the commission pursuant to Section 319 of the Public Utilities
22 Code, as of October 1 of each year, ~~multiplied by the inverse of~~
23 ~~the interstate wireless safe harbor percentage established by the~~
24 ~~Federal Communications Commission for federal universal service~~
25 ~~contribution purposes, as these percentages may be revised from~~
26 ~~time to time by using 78.5 percent of the total charges as being~~
27 *the intrastate portion of the charges.*

28 (c) (1) The board shall post, for each local jurisdiction, the
29 combined total of the rates of prepaid MTS surcharge and the rate
30 or rates of local charges, as calculated pursuant to Section 42012,
31 that each local jurisdiction has adopted, not later than December
32 1 of each year, on its Internet Web site. The posted combined rate
33 shall be the rate that applies to all retail transactions during the
34 calendar year beginning ~~January~~ *April* 1 following the posting.

35 (2) Notwithstanding paragraph (1), if a local agency notifies
36 the board pursuant to subdivision (b) of Section 42012 that the
37 posted rate is inaccurate or it no longer imposes a local charge or
38 local charges or that the rate of its local charge or local charges
39 has decreased ~~since the previous October 1 calculation~~, the board
40 shall promptly post a recalculated rate that is applicable to the

1 jurisdiction of that local agency. ~~The seller shall not be required~~
2 ~~to implement the changes any earlier than 60 days from the date~~
3 ~~on which the board posts the new rate and provides written~~
4 ~~notification to the seller. If the 60th day is not the first day of a~~
5 ~~month, then the seller shall implement the changes on the first day~~
6 ~~of the month following the month in which the 60th day occurs.~~
7 *change shall become operative on the first day of the calendar*
8 *quarter commencing more than 60 days from the date the local*
9 *agency notifies the board of the inaccuracy or that it no longer*
10 *imposes a local charge or that the rate of its local charge has*
11 *decreased.* Nothing in this section modifies the notice obligations
12 of Section 799 of the Public Utilities Code. However, beginning
13 January 1, 2015, the notification and implementation requirements
14 of paragraphs (5) and (6) of subdivision (a) of Section 799 shall
15 not apply to prepaid mobile telephony services.

16 (3) A seller collecting the prepaid MTS surcharge and local
17 charges pursuant to this part and Part ~~21.2~~ 21.1 (commencing with
18 Section 42100) may rely upon the accuracy of the information
19 posted on the board's Internet Web site in collecting the state
20 surcharge and local charges.

21 (d) Except for amounts retained pursuant to subdivision (e), all
22 amounts of the prepaid MTS surcharge and local charges collected
23 by sellers shall be remitted to the board pursuant to Chapter 3
24 (commencing with Section 42020).

25 (e) A seller shall be permitted to deduct and retain an amount
26 equal to 3 percent of the amounts that are collected by the seller
27 from prepaid consumers for the prepaid MTS surcharge and local
28 charges.

29 (f) The amount of the combined prepaid MTS surcharge and
30 local charges shall be separately stated on an invoice, receipt, or
31 other similar document that is provided to the prepaid consumer
32 of mobile telephony services by the seller, or otherwise disclosed
33 *electronically* to the prepaid consumer, at the time of the retail
34 transaction.

35 (g) ~~The prepaid MTS surcharge and any local charges are~~ *is*
36 ~~required to be collected by a seller and any amount unreturned to~~
37 ~~the prepaid consumer of mobile telephony services that is not owed~~
38 ~~as part of the surcharge, but was collected from the prepaid~~
39 ~~consumer under the representation by the seller that it was owed~~
40 ~~as part of the surcharge, constitute debts owed by the seller to this~~

1 state. *The local charge shall be collected by a seller, and any*
2 *amount unreturned to the prepaid consumer of mobile telephony*
3 *services that is not owed as part of the local charge but that was*
4 *collected from the prepaid consumer under the representation by*
5 *the seller that it was owed as part of the local charge constitutes*
6 *a debt owed by the seller jointly to the state, for purposes of*
7 *collection on behalf of, and payment to, the local jurisdiction and*
8 *to the local jurisdiction imposing that local charge.*

9 (h) A seller that has collected any amount of prepaid MTS
10 surcharge and local charges in excess of the amount of the
11 surcharge imposed by this part and actually due from a prepaid
12 consumer may refund that amount to the prepaid consumer, even
13 though the surcharge amount has already been paid over to the
14 board and no corresponding credit or refund has yet been secured.
15 Any seller making a refund of any charge to a prepaid consumer
16 may repay therewith the amount of the surcharge paid. ~~The seller~~
17 ~~may claim credit for that overpayment against the amount of~~
18 ~~surcharge imposed by this part that is due upon any other quarterly~~
19 ~~return, provided the credit is claimed in a return dated no later than~~
20 ~~three years from the date of overpayment.~~

21 (i) (1) Every prepaid consumer of mobile telephony services
22 in this state is liable for the prepaid MTS surcharge and any local
23 charges until they have been paid to this state, except that payment
24 to a seller registered under this part relieves the prepaid consumer
25 from further liability for the surcharge and local charges. Any
26 surcharge collected from a prepaid consumer that has not been
27 remitted to the board shall be a debt owed to the state by the person
28 required to collect and remit the surcharge. Any local charge
29 collected from a prepaid consumer that has not been remitted to
30 the board shall be a debt owed jointly to the state, *for purposes of*
31 *collection on behalf of, and payment to, the local jurisdiction and*
32 *to the local jurisdiction imposing the local charge by the person*
33 *required to collect and remit the local charge.* Nothing in this part
34 shall impose any obligation upon a seller to take any legal action
35 to enforce the collection of the surcharge or local charge imposed
36 by this section.

37 (2) A credit shall be allowed against, but shall not exceed, the
38 prepaid MTS surcharge and local charges imposed on any prepaid
39 consumer of mobile telephony services by this part to the extent
40 that the prepaid consumer has paid emergency telephone users

1 charges, state utility regulatory commission fees, state universal
2 service charges, or local charges on the purchase to any other state,
3 political subdivision thereof, or the District of Columbia. The credit
4 shall be apportioned to the charges against which it is allowed in
5 proportion to the amounts of those charges.

6 ~~42012. (a) A local agency that has enacted a local charge that~~
7 ~~is applicable to prepaid mobile telephony service, or in the future~~
8 ~~enacts a new or increased local charge, shall enter into a contract~~
9 ~~with the board for the board to perform the functions set forth in~~
10 ~~Section 42103 and that requires the local agency to provide the~~
11 ~~board with written notice of the amount of the local 911 charge,~~
12 ~~as set out in Section 42102.5, or the applicable tiered rate for a~~
13 ~~utility user tax, as set out in Section 42102, on or before September~~
14 ~~1, commencing September 1, 2014, and for each year thereafter.~~

15 ~~(b) For each contract required in subdivision (a), the local~~
16 ~~agency shall provide a certification to the board that its ordinance~~
17 ~~applies its local charge to prepaid mobile telephony services and~~
18 ~~that the local agency agrees to indemnify, and hold and save~~
19 ~~harmless, the board, its officers, agents, and employees for any~~
20 ~~and all liability for damages that may result from collection~~
21 ~~pursuant to the contract required in subdivision (a).~~

22 ~~(c) A local agency that has enacted local charges shall~~
23 ~~immediately notify the board of any reduction or elimination of~~
24 ~~charges that are applicable to prepaid mobile telephony services~~
25 ~~pursuant to Section 42010.~~

26 ~~42014. (a) For purposes of this part, a retail transaction occurs~~
27 ~~in the state under any of the following circumstances:~~

28 ~~(1) The prepaid consumer makes the retail transaction in person~~
29 ~~at a business location in the state (point-of-sale transaction).~~

30 ~~(2) If paragraph (1) is not applicable, the prepaid consumer's~~
31 ~~address is in the state (known address transaction). A~~
32 ~~known-address transaction occurs in the state under any of the~~
33 ~~following circumstances:~~

34 ~~(A) The retail sale involves shipping of an item to be delivered~~
35 ~~to, or picked up by, the prepaid consumer at a location in the state.~~

36 ~~(B) If the prepaid consumer's address is known by the seller to~~
37 ~~be in the state, including if the seller's records maintained in the~~
38 ~~ordinary course of business, business indicate that the prepaid~~
39 ~~consumer's address is in the state and the records are not made or~~
40 ~~kept in bad faith.~~

1 (C) The prepaid consumer provides an address during
2 consummation of the retail transaction that is in the state, including
3 an address provided with respect to the payment instrument if no
4 other address is available and the address is not given in bad faith.

5 (D) The mobile telephone number is associated with a location
6 in this state.

7 (b) (1) A retail transaction shall occur at only one location for
8 purposes of determining local charges. If the retail transaction is
9 a point-of-sale transaction, the consumption of, use of, or access
10 to, the prepaid mobile telephony service shall be presumed to be
11 at that location.

12 (2) If the retail transaction is a known-address transaction, the
13 location shall be as determined in descending order beginning with
14 subparagraph (A) of paragraph (2) of subdivision ~~(a)~~, (a); if
15 subparagraph (A) of that paragraph is inapplicable, then pursuant
16 to subparagraph (B) of that ~~paragraph~~, paragraph; if both
17 subparagraphs (A) and (B) of that paragraph are inapplicable, then
18 subparagraph (C) of that ~~paragraph~~, paragraph; and if
19 subparagraphs (A), (B), and (C) of that paragraph are inapplicable,
20 then subparagraph (D) of that paragraph. In a known address
21 transaction, the consumption of, use of, or access to, the prepaid
22 mobile telephony service shall be presumed to be at the known
23 address.

24 (c) (1) A seller that relies in good faith on ~~geographical retail~~
25 *location* information *that the board shall provide* to match the
26 location of a point-of-sale transaction to the applicable prepaid
27 MTS surcharge amount and local charges, *that* collects that amount
28 from the prepaid consumer, and *that* remits the amount to the board
29 in compliance with this part, shall not be liable for any additional
30 MTS surcharge or local charges and shall not be required to refund
31 any amounts collected and paid to the board to the prepaid
32 consumer.

33 (2) For a known-address transaction, the seller may collect the
34 prepaid MTS surcharge and local charges that correspond to the
35 five-digit postal ZIP Code of the prepaid consumer's address. A
36 seller that ~~relies~~, *with due diligence and* in good faith, *relies* on
37 *credible* information ~~provided by the board~~ to match the five-digit
38 postal ZIP Code of the prepaid consumer's address to the applicable
39 prepaid MTS surcharge and local charges amount, *that* collects
40 that amount from the prepaid consumer, and *that* remits the amount

1 to the board in compliance with this part, shall not be liable for
2 any additional MTS surcharge or local charges and shall not be
3 required to refund any amounts collected and paid to the board to
4 the prepaid consumer, even if the five-digit postal ZIP Code of the
5 prepaid consumer's address that the seller uses corresponds to
6 more than one local charge.

7 42016. The prepaid MTS surcharge and local charges are
8 imposed on the prepaid consumer of mobile telephony services
9 and not on the seller or on any prepaid MTS provider, except that
10 the seller shall collect and remit all of the prepaid MTS surcharges
11 and local charges pursuant to this part and Part 21.1 (commencing
12 with Section 42100).

13 ~~42018. (a) If prepaid mobile telephony services are sold with~~
14 ~~a mobile telephony service communication device, commonly~~
15 ~~termed a cellular telephone, for a single, nonitemized price, then~~
16 ~~the prepaid MTS surcharge and local charges shall apply to the~~
17 ~~entire nonitemized price unless the seller elects to apply the~~
18 ~~surcharge and local charges to either of the following:~~

19 ~~(1) If~~

20 *42018. (a) Except as provided in subdivisions (b) and (c), if*
21 *prepaid mobile telephony services are sold in combination with*
22 *mobile data services or any other services or products for a single*
23 *price, then the prepaid MTS surcharge and local charges shall*
24 *apply to the entire price.*

25 *(b) If prepaid mobile telephone services are sold with a mobile*
26 *telephone service communication device, commonly termed a*
27 *cellular telephone, for a single, nonitemized price, then the prepaid*
28 *MTS surcharge and local charges shall apply to the entire*
29 *nonitemized price, except if the purchase price for the prepaid*
30 *mobile telephony services component of the bundled charge is and*
31 *the purchase price of the prepaid mobile telephony services*
32 *component are disclosed to the prepaid consumer on a receipt,*
33 *invoice, or other written or electronic documentation provided to*
34 *the prepaid consumer, the prepaid MTS surcharge and local charges*
35 *may be calculated based upon that amount.*

36 ~~(2) If the seller can identify the portion of the bundled price that~~
37 ~~is attributable to the prepaid mobile telephony services by~~
38 ~~reasonable and verifiable standards from its books and records that~~
39 ~~are kept in the regular course of business for other purposes,~~

1 including nontax purposes, the prepaid MTS surcharge and local
2 charges may be calculated based upon that amount.

3 (b)

4 (c) If a minimal amount of prepaid mobile telephony service is
5 sold for a single, nonitemized price with a mobile telephony service
6 communications device the seller may elect not to apply the prepaid
7 MTS surcharge or local charges to the transaction. For these
8 purposes, a service allotment denominated as 10 minutes or less,
9 or five dollars (\$5) or less, is a minimal amount.

10
11 CHAPTER 3. ADMINISTRATION
12

13 42020. (a) (1) The board shall administer and collect the
14 prepaid MTS surcharge imposed by this part pursuant to the Fee
15 Collection Procedures Law (Part 30 (commencing with Section
16 55001)). For purposes of this part, the references in the Fee
17 Collection Procedures Law to “fee” shall include the prepaid MTS
18 surcharge imposed by this part, and references to “feepayer” shall
19 include a person required to pay the surcharge imposed by this
20 part, which includes the seller, who shall be required to register
21 with the board.

22 (2) Notwithstanding Article 1.1 (commencing with Section
23 55050) of Chapter 3 of Part 30, any person required, or that elects,
24 to remit amounts due under Part 1 (commencing with Section
25 6001) by electronic funds transfer pursuant to Article 1.2
26 (commencing with Section 6479.3) of Chapter 5 of Part 1 shall
27 remit ~~assessment~~ *prepaid MTS surcharge* amounts due under this
28 section by electronic funds transfer.

29 (b) (1) The board may prescribe, adopt, and enforce regulations
30 relating to the administration and enforcement of this part,
31 including, but not limited to, collections, reporting, refunds, and
32 appeals.

33 (2) The board may prescribe, adopt, and enforce any emergency
34 regulations as necessary to implement this part. Any emergency
35 regulation prescribed, adopted, or enforced pursuant to this section
36 shall be adopted in accordance with Chapter 3.5 (commencing
37 with Section 11340) of Part 1 of Division 3 of Title 2 of the
38 Government Code, and, for purposes of that chapter, including
39 Section 11349.6 of the Government Code, the adoption of the
40 regulation is an emergency and shall be considered by the Office

1 of Administrative Law as necessary for the immediate preservation
2 of the public peace, health and safety, and general welfare.

3 (c) The board shall establish procedures to be utilized by a seller
4 to document that a sale is not a retail transaction.

5 (d) The board shall establish procedures for sharing of
6 information, other than information protected under Section 19542,
7 related to the collection of the prepaid MTS surcharge upon the
8 request of the Public Utilities Commission or the ~~Department of~~
9 ~~Technology~~ *Office of Emergency Services*.

10 42021. The board shall establish remittance schedules and
11 methods for *payment of* the prepaid MTS surcharge that utilize
12 existing methods established under the Sales and Use Tax Law
13 (Part 1 (commencing with Section 6001)), including all of the
14 following:

15 (a) The prepaid MTS surcharge, minus the amount retained by
16 the seller pursuant to subdivision (e) of Section 42010, is due and
17 payable to the board quarterly on or before the last day of the
18 month ~~next succeeding each quarterly period~~ *following each*
19 *calendar quarter*.

20 (b) On or before the last day of the month following each
21 ~~quarterly period of three months~~ *calendar quarter*, a return for the
22 ~~preceding quarterly period~~ *calendar quarter* shall be filed using
23 electronic media with the board.

24 (c) Returns shall be authenticated in a form or pursuant to
25 methods as may be prescribed by the board.

26 42022. Every seller shall register with the board. The board
27 shall establish a method for registration of sellers under this part
28 that utilizes the existing registration process for a seller's permit
29 established pursuant to Section 6066 of the Sales and Use Tax
30 Law (Part 1 (commencing with Section 6001)). Every application
31 for registration shall be made upon a form prescribed by the board
32 and shall set forth the name under which the applicant transacts
33 or intends to transact business, the location of its place or places
34 of business, and such other information as the board may require.
35 An application for registration shall be authenticated in a form or
36 pursuant to methods as may be prescribed by the board.

37 42023. (a) The Prepaid Mobile Telephony Services Surcharge
38 Fund is hereby created in the State Treasury. The Prepaid MTS
39 911 Account and the Prepaid MTS PUC Account are hereby
40 created in the fund. The Prepaid Mobile Telephony Services

1 Surcharge Fund shall consist of all surcharges, interest, penalties,
2 and other amounts collected and paid to the board pursuant to this
3 part, ~~less a deduction in an amount not to exceed 2 percent of the~~
4 ~~collected amounts to refund and reimburse payments of refunds~~
5 ~~and reimbursements to~~ the board for expenses incurred in the
6 administration and collection of the prepaid MTS surcharge.

7 (b) All moneys in the Prepaid Mobile Telephony Services
8 Surcharge Fund attributable to the prepaid MTS surcharge shall
9 be deposited as follows:

10 (1) That portion of the prepaid MTS surcharge that is for the
11 emergency telephone users surcharge shall be deposited into the
12 Prepaid MTS 911 Account.

13 (2) That portion of the prepaid MTS surcharge that is for the
14 Public Utilities Commission surcharges shall be deposited into the
15 Prepaid MTS PUC Account.

16 (c) Moneys in the Prepaid MTS 911 Account and the Prepaid
17 MTS PUC Account may be appropriated by the Legislature only
18 for the purposes for which the moneys were collected. All moneys
19 collected pursuant to this part shall be allocated only to the entities
20 specified in this section and shall not be used for any other purpose,
21 including, but not limited to, loans, transfers, or uses for any other
22 purpose, ~~funds fund~~, or account.

23 *42024. This part shall remain in effect only until January 1,*
24 *2020, and as of that date is repealed, unless a later enacted statute,*
25 *that is enacted before January 1, 2020, deletes or extends that*
26 *date.*

27 ~~SEC. 7.~~

28 *SEC. 11.* Part 21.1 (commencing with Section 42100) is added
29 to Division 2 of the Revenue and Taxation Code, to read:

30
31 **PART 21.1. LOCAL PREPAID MOBILE TELEPHONY**
32 **SERVICES COLLECTION ACT**
33

34 42100. (a) This part shall be known and may be cited as the
35 Local Prepaid Mobile Telephony Services Collection Act.

36 (b) The Legislature finds and declares all of the following:

37 (1) Maintaining effective and efficient communications services,
38 911 emergency systems, communications-related public policy
39 programs to promote universal service, and various local programs

1 across the state benefit all persons with access to the
2 telecommunications system.

3 (2) Providers of end-use communications services, including
4 providers of mobile voice telecommunications services, which the
5 Federal Communications Commission terms mobile telephony
6 service, are required to collect and remit utility users taxes and
7 local 911 or access charges (local charges) imposed by over 150
8 cities and counties in California on end-users of such mobile
9 telephony services, as required by existing state or local law.

10 (3) Local charges on telecommunication services represent an
11 important source of tax revenue for many cities and ~~counties~~,
12 *counties* and are used to pay for such essential governmental
13 services as public safety, streets, parks, libraries, senior centers,
14 and many more.

15 (4) Prepaid mobile telephony services are an important and
16 growing segment of the communications industry. Prepaid mobile
17 telephony services, unlike postpaid mobile telephony services, are
18 frequently sold by a third-party-~~retailer~~ *seller* that is not the
19 provider of mobile telephony services, and collecting local charges
20 from prepaid consumers of mobile telephony services at the time
21 of the retail transaction is necessary and the most efficient and
22 competitively neutral means for the collection of those local
23 charges.

24 (5) The collection of prepaid mobile telephony services by
25 third-party-~~retailers~~ *sellers* and the remittance of those local charges
26 to the board involves administrative costs and responsibilities that
27 are unique to prepaid mobile telephony services, and therefore
28 justify unique reimbursement and tax rate simplification measures,
29 which are fair and reasonable.

30 (c) It is a matter of statewide concern that the local charges for
31 local prepaid mobile telephony services be collected in a uniform
32 manner in order for the collection to be fair and uniform on a
33 statewide basis.

34 (d) It is the intention of the Legislature that this part shall
35 preempt the provisions pertaining to the *tax or charge* rate, *base*,
36 and *method of* collection-~~methodology~~ contained in all local
37 ordinances, rules, or regulations concerning the imposition of a
38 local charge upon the consumption of prepaid mobile telephony
39 services *to the extent those provisions are inconsistent with the*
40 *provisions of this part and Part 21 (commencing with Section*

1 42000). *It is not the intent of the Legislature to otherwise preempt,*
2 *limit, or affect the general authority of local jurisdictions to impose*
3 *a utility user tax, local 911 charge, or any other local charges.*

4 42101. For purposes of this part, all of the following definitions
5 shall apply:

6 (a) *“Local agency” means a city, county, or city and county,*
7 *which includes a charter city, county, or city and county.*

8 (a)

9 (b) *“Local charge” means the utility user taxes as described in*
10 *Section 42102, and charges for access to communication services*
11 *or to local “911” emergency telephone systems, as described in*
12 *Section 42102.5.*

13 (c) *“Ordinance” refers to an ordinance of a local agency*
14 *imposing a local charge, including any local enactment relating*
15 *to the filing of a refund or a claim arising under the ordinance.*

16 (b)

17 (d) *“Prepaid mobile telephony services” has the same meaning*
18 *as that term is defined in the Prepaid Mobile Telephony Services*
19 *Surcharge Collection Act (Part 21 (commencing with Section*
20 *42000)).*

21 ~~42101.5. On and after January 1, 2015, and before _____, a local~~
22 ~~charge imposed on the consumption of prepaid mobile telephony~~
23 ~~services shall be collected from the prepaid consumer at the same~~
24 ~~time and in the same manner as the prepaid MTS surcharge is~~
25 ~~collected under Part 21 (commencing with Section 42000), in lieu~~
26 ~~of collection of those local charges by the city, county, or city and~~
27 ~~county, including a charter city, county, or city and county.~~
28 ~~Through and including December 31, 2014, a prepaid MTS~~
29 ~~provider may elect to remit the local charge based on the tax rate~~
30 ~~of Section 42102 to the appropriate local taxing jurisdiction, and~~
31 ~~those remittances shall be deemed to be in full compliance with~~
32 ~~the local ordinance imposing a local charge on prepaid mobile~~
33 ~~telephony service.~~

34 42101.5. (a) *On and after January 1, 2015, a local charge*
35 *imposed by a local agency on prepaid mobile telephony services*
36 *shall be collected from the prepaid consumer by a seller at the*
37 *same time and in the same manner as the prepaid MTS surcharge*
38 *is collected under Part 21 (commencing with Section 42000) if,*
39 *on or before September 1, 2014, the local agency shall enter into*
40 *a contract with the board for the board to perform the functions*

1 set forth in Section 42103. In the contract, the local agency shall:
2 (1) certify to the board that its ordinance applies its local charge
3 to prepaid mobile telephony services and that the local agency
4 agrees to indemnify, and hold and save harmless, the board, its
5 officers, agents, and employees for any and all liability for damages
6 that may result from collection pursuant to the contract; and, (2)
7 certify to the board the amount of the local 911 charge, as set out
8 in Section 42102.5, or the applicable tiered rate for a utility user
9 tax, as set out in Section 42102.

10 (b) In the event that a local agency adopts a new local charge
11 that is imposed on prepaid mobile telephony services after
12 September 1, 2014, the local agency shall enter into a contract
13 with the board to perform the functions set forth in Section 42103,
14 on or before December 1, with collection of the local charge to
15 commence April 1 of the next calendar year. In the contract, the
16 local agency shall certify to the board: (1) that its ordinance
17 applies its local charge to prepaid mobile telephony services and
18 that the local agency agrees to indemnify, and hold and save
19 harmless, the board, its officers, agents, and employees for any
20 and all liability for damages that may result from collection
21 pursuant to the contract; and, (2) the amount of the local 911
22 charge, as set out in Section 42102.5, or the applicable tiered rate
23 for a utility user tax, as set out in Section 42102.

24 (c) In the event that a local agency increases its local charge
25 after September 1, 2014, the local agency shall provide the board
26 with written notice of the increased local charge on or before
27 December 1, with collection of the local charge to commence April
28 1 of the next calendar year.

29 (d) In the event that a local agency reduces or eliminates a local
30 charge on prepaid mobile telephony services, the local agency
31 shall provide the board with written notice pursuant to subdivision
32 (c) of Section 42010.

33 (e) Notwithstanding subdivision (a), through and including
34 December 31, 2014, a prepaid MTS provider may elect to remit
35 the local charge to the appropriate local taxing jurisdiction based
36 on the applicable tax rate of Section 42102, Section 42102.5, or
37 both, and those remittances shall be deemed to be in full
38 compliance with the local ordinance imposing a local charge on
39 prepaid mobile telephony service.

42102. (a) Notwithstanding any other law, on and after January 1, 2015, ~~and before _____~~, the authority of a city, county, or city and county, which includes a charter city, county, or city and county, to impose a utility user tax ~~rate~~ on the consumption of prepaid mobile telephony service in the city, county, or city and county at the rate as specified in an ordinance authorized pursuant to Section 7284.2 or any other law is suspended, and the utility user tax rate to be applied instead during the period under any ordinance as so adopted is the applicable of the following:

(1) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of less than 1.5 percent, the rate shall be 0 percent.

(2) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 1.5 percent or more but less than 2.5 percent, the rate shall be 1.5 percent.

(3) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 2.5 percent or more but less than 3.5 percent, the rate shall be 2.5 percent.

(4) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 3.5 percent or more but less than 4.5 percent, the rate shall be 3.5 percent.

(5) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 4.5 percent or more but less than 5.5 percent, the rate shall be 4.5 percent.

(6) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 5.5 percent or more but less than 6.5 percent, the rate shall be 5.5 percent.

(7) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 6.5 percent or more but less than 7.5 percent, the rate shall be 6.5 percent.

(8) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 7.5 percent or more but less than 9 percent, the rate shall be 7.5 percent.

(9) In the case of a city, county, or city and county that has adopted an ordinance to impose a utility user tax on the consumption of prepaid communication services in the city, county, or city and county at the rate of 9 percent or more, the rate shall be 9 percent.

(b) Subdivision (a) is a self-executing provision that operates without regard to any decision or act on the part of any city, county, or city and county. A change in a utility user tax rate resulting from either the suspension of, or the termination of the suspension of, a utility user rate adopted by a city, county, or city and county set forth in subdivision (a) is not subject to voter approval under either statute or Article XIII C of the California Constitution.

(c) Notwithstanding subdivision (a), a city, county, or city and county may levy, increase, or extend a utility user tax at any rate on the consumption of communication services, including a utility user tax on the consumption of prepaid mobile telephony service, except that during the period on and after January 1, 2015, ~~and before _____~~, any utility user tax rate on prepaid mobile telephony service under any ordinance as so adopted shall be the applicable rate specified in subdivision (a).

(d) On and after January 1, 2015, ~~and before _____~~, this part shall be all of the following:

(1) The exclusive method for both of the following:

(A) Collecting the local utility user taxes, local 911 charges, and any other local charges imposed on ~~customers~~ *consumers* using prepaid ~~communication~~ *mobile telephony* services.

(B) Defining the scope of the tax or charge *with respect to prepaid mobile telephony services*.

1 (2) The ~~substitution~~ *complete substitute* for the utility user tax
2 rate set out in the local ordinance with the applicable tiered rate
3 as established by the Legislature. ~~This~~

4 (3) *This* part shall not preempt, limit, or affect the general
5 authority of local jurisdictions to impose a utility user tax, local
6 911 charge, or any other local charges.

7 42102.5. (a) Notwithstanding any other law, on and after
8 January 1, 2015, ~~and before _____~~, the authority of a city, county,
9 or city and county, which includes a charter city, county, or city
10 and county, to impose a charge, that applies to prepaid mobile
11 telephony service, for access to communication services or access
12 to local “911” emergency telephone systems in the city, county,
13 or city and county at the rate as specified in an ordinance is
14 suspended, and the rate to be applied instead during that period
15 under any ordinance as so adopted is the applicable of the
16 following:

17 (1) In the case of a city, county, or city and county that has
18 adopted an ordinance to impose a ~~charge~~, *charge* that applies to
19 prepaid mobile telephony ~~service~~, *service* for access to
20 communication services or access to local “911” emergency
21 telephone systems in the city, county, or city and county at the rate
22 of less than ____ dollars (\$____) per month per access line,
23 including any adjustments for inflation, the rate shall be 0 percent.

24 (2) In the case of a city, county, or city and county that has
25 adopted an ordinance to impose a charge; that applies to prepaid
26 mobile telephony ~~service~~, *service* for access to communication
27 services or access to local “911” emergency telephone systems in
28 the city, county, or city and county at the rate of ____ dollars
29 (\$____) per month per access line, including any adjustments for
30 inflation, or more but less than ____ dollars (\$____) per month
31 per access line, including any adjustments for inflation, the rate
32 shall be the percentage obtained by dividing ____ by fifty, rounded
33 up to the nearest one-tenth of 1 percent.

34 (b) Subdivision (a) is a self-executing provision that operates
35 without regard to any decision or act on the part of any city, county,
36 or city and county. A change in an access charge rate resulting
37 from either the suspension of, or the termination of the suspension
38 of, a charge adopted by a city, county, or city and county set forth
39 in subdivision (a) is not subject to voter approval under either
40 statute or Article XIII C of the California Constitution.

(c) Notwithstanding subdivision (a), a city, county, or city and county may levy, increase, or extend a charge at any rate, that applies to prepaid mobile telephony services, for access to communication services or access to local “911” emergency telephone systems in the city, county, or city and county, except that during the period on and after January 1, 2015, ~~and before~~ , any charge on prepaid mobile telephony service under any ordinance as so adopted shall be the applicable rate specified in subdivision (a).

42103. (a) The board shall perform all functions incident to the collection of the local charges of a city, county, or a city and county, and shall collect and administer the local charges in the manner prescribed for the collection of the prepaid MTS surcharge in the Prepaid Mobile Telephony Services Surcharge and Collection Act (Part 21 (commencing with Section 42000)), subject to the limitations set forth in ~~subdivisions (d), (e), and (f) of this section, and subdivision (a) of Section 42105.~~

(b) All local charges collected by the board shall be deposited in the Local Charges for Prepaid Mobile Telephony Services Fund which is hereby created in the State Treasury, and shall be held in trust for the local taxing jurisdiction, and shall not be used for any other purpose. Local charges shall consist of all taxes, charges, interest, penalties, and other amounts collected and paid to the board, ~~less a deduction in an amount not to exceed 2 percent of the collected amounts to refund and reimburse payments for refunds and reimbursement to~~ the board for expenses incurred in the administration and collection of the local charges. The board shall transmit the funds to the local jurisdictions periodically as promptly as feasible. The transmittals required under this section shall be made at least once in each calendar quarter. The board shall furnish a quarterly statement indicating the amounts paid and withheld.

(c) The board shall prescribe and adopt rules and regulations as may be necessary or desirable for the administration and collection of local charges and the distribution of the local charges collected.

(d) The board’s audit duties under this part shall be limited to verification that the seller complied with ~~paragraphs (2) and (3) of subdivision (c) of Section 42014~~ *this part*.

(e) The board may contract with a third ~~party, pursuant to Section 55303,~~ *but party* for purposes of this part, solely in connection with the following board duties:

1 (1) To allocate and transmit collected local charges in the
2 Prepaid Mobile Telephony Services Surcharge Fund pursuant to
3 subdivision (b) to the appropriate local jurisdictions.

4 (2) To audit proper collection and remittance of the local charge
5 pursuant to ~~subdivision (d)~~ *this part*.

6 (3) To respond to requests from sellers, ~~customers~~ *consumers*,
7 boards, and others regarding issues pertaining to local charges that
8 are within the scope of the board's duties.

9 (f) For purposes of this part, any third-party contract under
10 subdivision (e) shall be subject to the following limitations:

11 (1) Any third party shall, to the same extent as the board, be
12 subject to subdivision (b) of Section 55381, relating to unlawful
13 disclosures.

14 (2) ~~No~~ A third-party contract shall *not* provide, in whole or in
15 part, in any manner a contingent fee arrangement as payment for
16 services rendered. For purposes of this section, "contingent fee"
17 includes, but is not limited to, a fee that is based on a percentage
18 of the tax liability reported on a return, a fee that is based on a
19 percentage of the taxes owed, or a fee that depends on the specific
20 tax result attained.

21 ~~(3) The board shall not perform or contract with any third party~~
22 ~~to perform any duty under subdivision (e) if the same duty has~~
23 ~~previously been or is currently being performed by the board~~
24 ~~individually or pursuant to another third-party contract for the~~
25 ~~same ordinance, tiered rate, audit, refund claim, or local charge~~
26 ~~request in the same tax period.~~

27 42105. (a) The city, county, or city and county that has adopted
28 an ordinance to impose a *local* charge that applies to prepaid
29 mobile telephony service shall be solely responsible for:

30 (1) Defending any claim regarding the validity of the ordinance
31 in its application to prepaid mobile telephony service.

32 (2) Interpreting any provision of the ordinance, except to the
33 extent specifically superseded by this statute.

34 ~~(3) Responding to claims for refund, including claims of~~
35 ~~exemption under the ordinance any claim for refund by a customer~~
36 ~~arising under subdivision (b), (c), or (d). The claim shall be~~
37 ~~processed in accordance with the provisions of the local enactment~~
38 ~~that allows the claim to be filed.~~

39 (4) *Certifying that the city, county, or city and county ordinance*
40 *applies the local charge to prepaid mobile telephony services and*

1 *agreeing to indemnify and hold harmless the board, its officers,*
2 *agents, and employees for any and all liability for damages that*
3 *may result from collection of the local charge.*

4 *(5) Reallocation of local charges as a result of correcting errors*
5 *relating to the location of the point of sale of a seller or the known*
6 *address of a consumer, for up to two past quarters from the date*
7 *of knowledge.*

8 *(b) A consumer may rebut the presumed location of the retail*
9 *transaction to the city or county clerk of the local jurisdiction, as*
10 *provided in subdivision (b) of Section 42014, by filing a claim and*
11 *declaration under penalty of perjury on a form established by the*
12 *city or county clerk of the local jurisdiction indicating the actual*
13 *location of the retail sale. The claim shall be processed in*
14 *accordance with the provisions of the local ordinance enactment*
15 *that allows the claim to be filed. A customer that is exempt from*
16 *the local charge under the local ordinance may file a claim for a*
17 *refund from the local jurisdiction in accordance with the refund*
18 *provisions of the local ordinance.*

19 *(c) A consumer that is exempt from the local charge under the*
20 *local enactment may file a claim for a refund from the local*
21 *jurisdiction in accordance with the refund provisions of the local*
22 *enactment that allows the claim to be filed.*

23 ~~(e)~~
24 *(d) In connection with any actions or claims relating to or arising*
25 *from the invalidity of a local tax ordinance, in whole or in part,*
26 *the seller shall not be liable to any ~~customer~~ consumer as a*
27 *consequence of collecting the tax. In the event a local jurisdiction*
28 *is ordered to refund the tax, it shall be the sole responsibility of*
29 *the local jurisdiction to refund the tax. In any action seeking to*
30 *enjoin collection of a local charge by a seller, in any action seeking*
31 *declaratory relief concerning a local charge, in any action seeking*
32 *a refund of a local charge, or in any action seeking to otherwise*
33 *invalidate a local charge, the sole necessary party defendant in the*
34 *action shall be the local jurisdiction on whose behalf the local*
35 *charge is collected, and the seller collecting the local charge shall*
36 *not be named as a party in the action. There shall be no recovery*
37 *from the state for the imposition of any unconstitutional or*
38 *otherwise invalid local charge that is collected pursuant to this*
39 *part.*

40 42106. (a) For purposes of this section:

1 (1) “Quarterly local charges” means the total amount of local
2 charges transmitted by the board to a city, county, or city and
3 county for a calendar quarter.

4 (2) “Refund” means the amount of local charges deducted by
5 the board from a city’s, county’s, or city and county’s quarterly
6 local charges in order to pay the city’s, county’s, or city and
7 county’s share of a local charge refund due to one taxpayer.

8 (3) “Offset portion” means that portion of the refund which
9 exceeds the greater of fifty thousand dollars (\$50,000) or 20 percent
10 of the city’s, county’s, or city and county’s quarterly local charges.

11 (b) Except as provided in subdivision (c), if the board has
12 deducted a refund from a city’s, county’s, or city and county’s
13 quarterly local charges which includes an offset portion, then the
14 following provisions apply:

15 (1) Within three months after the board has deducted an offset
16 portion, the city, county, or city and county may request the board
17 to transmit the offset portion to the city, county, or city and county.

18 (2) As promptly as feasible after the board receives the city’s,
19 county’s, or city and county’s request, the board shall transmit to
20 the city, county, or city and county the offset portion as part of the
21 board’s periodic transmittal of local charges.

22 (3) The board shall thereafter deduct a pro rata share of the
23 offset portion from future transmittals of local charges to the city,
24 county, or city and county over a period to be determined by the
25 board, but not less than two calendar quarters and not more than
26 eight calendar quarters, until the entire amount of the offset portion
27 has been deducted.

28 (c) The board shall not transmit the offset portion of the refund
29 to the city, county, or city and county if that transmittal would
30 reduce or delay either the board’s payment of the refund to the
31 taxpayer or the board’s periodic transmittals of local charges to
32 other cities, counties, or city and county.

33 42107. The city, county, or city and county shall pay to the
34 board its costs of preparation to administer ~~the collection of~~ and
35 *collect* local charges. The city, county, or city and county shall
36 pay ~~such~~ costs monthly as *are* incurred and billed by the board.
37 The costs include all preparatory costs, including costs of
38 developing procedures, programming for data processing,
39 developing and adopting appropriate regulations, designing and
40 printing of forms, developing instructions for the board’s staff and

1 for taxpayers, and other necessary preparatory costs which shall
2 include the board's direct and indirect costs as specified by Section
3 11256 of the Government Code. Any disputes as to the amount of
4 preparatory costs incurred shall be resolved by the Director of
5 Finance, and his or her decision shall be final. ~~The maximum~~
6 ~~amount of all preparatory costs to be paid by the city, county, or~~
7 ~~city and county shall not, in any event, exceed _____ thousand~~
8 ~~dollars (\$_____).~~

9 ~~42108. (a) There shall be no recovery from the state for the~~
10 ~~imposition of any unconstitutional or otherwise invalid local charge~~
11 ~~that is collected pursuant to this part.~~

12 ~~(b) If a final and nonappealable decision of a court of competent~~
13 ~~jurisdiction determines that a local charge is unconstitutional or~~
14 ~~otherwise invalid, the city, the county, or the city and county, as~~
15 ~~the case may be, shall transfer to the board the revenues derived~~
16 ~~from the unconstitutional or invalid local charge necessary to~~
17 ~~reimburse claimants for the unconstitutional or invalid local charge~~
18 ~~paid, including interest allowed under Section 6907. The board~~
19 ~~shall deposit these revenues in a segregated impound account in~~
20 ~~the Prepaid Mobile Telephony Services Surcharge Fund, and shall~~
21 ~~administer any refunds necessitated in accordance with the Fee~~
22 ~~Collection Procedures Law (Part 30 (commencing with Section~~
23 ~~55001)).~~

24 ~~42109. The board shall annually prepare a report showing the~~
25 ~~amount of both reimbursed and unreimbursed costs incurred by it~~
26 ~~in administering the collection of local charges pursuant to this~~
27 ~~part.~~

28 ~~42110. (a) Notwithstanding Section 55381, it is unlawful for~~
29 ~~any person, other than an officer or employee of a county, city and~~
30 ~~county, city, or district, who obtains access to information~~
31 ~~contained in, or derived from, prepaid mobile telephony services~~
32 ~~surcharge and local charge records of the board pursuant to~~
33 ~~subdivision (b), to retain that information after that person's~~
34 ~~contract with the county, city and county, city, or district has~~
35 ~~expired.~~

36 ~~(b) (1) When requested by resolution of the legislative body of~~
37 ~~any county, city and county, city, or district, the board shall permit~~
38 ~~any duly authorized officer or employee of the county, city and~~
39 ~~county, city, or district, or other person designated by that~~
40 ~~resolution, to examine all of the prepaid mobile telephony services~~

1 surcharge and local charge records of the board pertaining to the
2 ascertainment of those prepaid mobile telephony services surcharge
3 and local charges to be collected for the county, city and county,
4 city, or district by the board pursuant to contract entered into
5 between the board and the county, city and county, city, or district
6 pursuant to this part. Except as otherwise provided in this section,
7 this subdivision does not allow any officer, employee, or other
8 person authorized or designated by a county, city and county, city,
9 or district to examine any sales or transactions and use tax records
10 of any taxpayer. The costs that are incurred by the board in
11 complying with a request made pursuant to this subdivision shall
12 be deducted by the board from those revenues collected by the
13 board on behalf of the county, city and county, city, or district
14 making the request.

15 (2) The resolution of the legislative body of the county, city and
16 county, city, or district shall certify that any person designated by
17 the resolution, other than an officer or employee, meets all of the
18 following conditions:

19 (A) Has an existing contract with the county, city and county,
20 city, or district to examine those prepaid mobile telephony services
21 surcharge and local charge records.

22 (B) Is required by that contract to disclose information contained
23 in, or derived from, those prepaid mobile telephony services
24 surcharge and local charge records only to an officer or employee
25 of the county, city and county, city, or district who is authorized
26 by the resolution to examine the information.

27 (C) Is prohibited by that contract from performing consulting
28 services for a ~~retailer~~ *seller* during the term of that contract.

29 (D) Is prohibited by that contract from retaining the information
30 contained in, or derived from, those prepaid mobile telephony
31 services surcharge and local charge records, after that contract has
32 expired.

33 (3) Information obtained by examination of board records
34 pursuant to this subdivision shall be used only for purposes related
35 to the collection of the prepaid mobile telephony services surcharge
36 and local charges by the board pursuant to the contract, or for
37 purposes related to other governmental functions of the county,
38 city and county, city, or district set forth in the resolution.

39 (c) If the board believes that any information obtained pursuant
40 to subdivision (b) has been disclosed to any person not authorized

1 or designated by the resolution of the legislative body of the county,
2 city and county, city, or district, or has been used for purposes not
3 permitted by subdivision (b), the board may impose conditions on
4 access to its local charge records that the board considers
5 reasonable, in order to protect the confidentiality of those records.

6 (d) Predecessors, successors, receivers, trustees, executors,
7 administrators, assignees, and guarantors, if directly interested,
8 may be given information as to the items included in the measure
9 and amounts of any unpaid local charges or amounts of local
10 charges required to be collected, interest, and penalties.

11 *42111. This part shall remain in effect only until January 1,*
12 *2020, and as of that date is repealed, unless a later enacted statute,*
13 *that is enacted before January 1, 2020, deletes or extends that*
14 *date.*

15 ~~SEC. 8.~~

16 *SEC. 12.* No inference shall be drawn from the enactment of
17 this act with respect to any remittance requirements of a prepaid
18 MTS provider pursuant to the law as it existed prior to the
19 enactment of this act. Additionally, nothing in this act shall affect
20 any remittance requirements of a prepaid MTS provider for any
21 service other than prepaid mobile telephony services. Nothing in
22 this act shall affect the federal remittance requirements of a prepaid
23 MTS provider.

24 ~~SEC. 9.~~

25 *SEC. 13.* It is the intent of the Legislature that the remittance
26 obligations of a prepaid MTS provider, *relating to emergency*
27 *telephone users surcharge and any charges imposed by the Public*
28 *Utilities Commission pursuant to Chapter 2.5 (commencing with*
29 *Section 401) of Part 1 of Division 1 of the Public Utilities Code*
30 *or for purposes of the universal services programs,* shall continue
31 to remain subject to the law existing prior to the effective date of
32 this act ~~until, pursuant to this act, those obligations are changed~~
33 ~~as of~~ *until January 1, 2015 2016.* However, the law existing prior
34 to the effective date of this act shall remain applicable for each of
35 the following:

36 (a) The collection of surcharges, the liability for which accrued
37 prior to January 1, 2015.

38 (b) The making of any refunds and the effecting of any credits.

39 (c) The disposition of money collected.

1 (d) The commencement of any action or proceeding pursuant
2 to this part.

3 ~~SEC. 10.~~

4 *SEC. 14.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

13 ~~SEC. 11.~~

14 *SEC. 15.* This act is an urgency statute necessary for the
15 immediate preservation of the public peace, health, or safety within
16 the meaning of Article IV of the Constitution and shall go into
17 immediate effect. The facts constituting the necessity are:

18 In order to provide a standardized collection mechanism as soon
19 as possible by which state and local charges are collected from
20 end-users of prepaid mobile telephony services, thereby permitting
21 needed financial support for programs necessary to serve the public
22 or telecommunications users, it is necessary that this act take effect
23 immediately.